IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 546 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

PATEL TEJABHAI JETHABHAI

Appearance:

1. Criminal Revision Application No. 546 of 1997

MR ND GOHIL, APP for Petitioner - State

MR YOGESH S LAKHANI for Opponent Nos. 1, 2, 4-7

MR KS JHAVERI for Opponent No. 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 15/01/2003

C.A.V. JUDGEMENT

1. The State of Gujarat has, by filing this Criminal Revision Application under Section 397, read with Section 401 of the Criminal Procedure Code, 1973 [for short

"Cr.P.C."] challenged the correctness, legality, propriety and regularity of the order dated 07.08.1997 passed below Ex.126 dated 27.06.1997 presented by seven accused in Special Case No.1 of 1986, by the learned Additional Sessions Judge and Special Judge, Banaskantha District, Palanpur [who will be referred to hereinafter as the "learned Judge of the Special Court].

2. The facts leading to this present Criminal Revision Application in a nutshell, are as follows :-

2.1 On 01.01.1986, Shri Chandrakant Chandulal Vora, Chief Supply Inspector, Banaskantha District, Palanpur lodged his private complaint against the seven accused, who are revision opponent Nos.1 to 7 before this Court, in the Special Court constituted under Section 12(A) of the Essential Commodities Act, 1955 (Act No.10 of 1955) [for short "the Act"]. That private complaint came to be registered as Special Case No.1 of 1986. The learned Judge of the Special Court passed the following order :-

"Examined and ordered to be registered. Summons to be issued against the accused."

Pursuant to that order, the summons were issued against the seven accused and that seven accused appeared through their advocates before the learned Judge of the Special Court. During the period of pendency of the said Special Case No.1 of 1986, all the accused submitted the application Ex.126 dated 27.06.1997 stating interalia that the alleged incident of offence had taken place in the year 1982 and the said Special Case No.1 of 1986 could not be proceeded further during the period from 1982 to 1997 i.e. during a long period of 15 years and that accused have been terribly harassed economically, mentally and physically. During this long span of 15 years, they are under constant mental tension because of a hanging sword of the said Special Case No.1 of 1986. The accused have also stated in their application Ex.126 that the said Special Case No.1 of 1986 ought to have been disposed of, at the earliest, by giving effect of speedy trial to the said case. It is also stated by the accused that the said case has not yet reached to the stage of recording evidence of the prosecution witnesses and it is also not certain as to when it will reach to the stage of recording evidence of the prosecution witnesses and under these circumstances, the accused are under constant mental tension. They have also stated that they are indirectly punished during a long span of 15 years. By stating the aforesaid facts and

circumstances, the accused requested the Special Court to discharge them from the case. The learned Judge of the Special Court passed the following order below said application Ex.126, on 30.06.1997.

"To be kept for hearing.

Question raised whether accused is entitled to be discharged on the ground that there is delay in trial.

Matter being of public importance notice be placed in the Bar Association room inviting Advocates to address the Court on this point, if they so desire."

2.3 From the order Ex.126, it appears that the learned advocate, who appeared for the accused and the learned APP, who appeared before the Special Court were heard on the said application Ex.126. Pursuant to that order dated 30.06.1997 passed below application Ex.126, one advocate Mr.M. U. Somani, who appeared before the Special Court. Pursuant to general notice of the Court inviting advocates to address the Court on an importance question raised in application Ex.126, was also heard at length by the learned Judge of the Special Court. It appears from the order Ex.126 that the learned Judge of the Special Court examined the record thoroughly and after hearing the learned advocates for both the parties as well as Mr.M. U. Somani, who appeared for and on behalf of the Bar Association of Banaskantha District at Palanpur, came to a conclusion that there was an unexplained, inordinate gross delay of 15 years, in holding the trial against the accused and by placing reliance on different decisions of the Hon'ble Supreme Court on the point of fundamental right to a speedy public trial, passed the following order in application Ex.126 on 07.08.1997.

"The application Ex.126 is allowed.

Proceedings of Special Case No.1/86 against the accused persons for offences under the Essential Commodities Act are dropped. All the accused persons shall stand discharged. Their bail bonds shall stand cancelled."

3. Being aggrieved against and dissatisfied with the aforesaid order dated 07.08.1997 passed below application Ex.126 in Special Case No.1 of 1986 by the learned Judge of the Special Court, the State of Gujarat has preferred this present Criminal Revision Application.

4. It would be desirable to know the facts of the case of Special Case No.1 of 1986;

[i] On or about 08.12.1985, the accused Nos.1, 2, 5 and 6 were running a Fair Price Shop recognized by the Government, for which a license under the Gujarat Essential Commodities [License Control and Stock Declaration] Order, 1981 was issued. They were supposed to run their Fair Price Shop in accordance with the provisions of the aforesaid Order of 1981, and license issued their under.

[ii] On or about 08.12.1982, a permit for 40 bags of wheat was issued by the Office of Mamlatdar of Vav and pursuant to that permit, the accused No.1 had to take delivery of 40 bags of wheat from the godown of Civil Supplies Corporation, Tharad and, thereafter, to distribute that wheat to ration card holders, whose names were registered in the Fair Price Shop of village Bharadva. Likewise, on that day i.e. on 08.12.1982, the accused No.2 was issued a permit to take delivery of 50 bags of wheat from the godown of Civil Supplies Corporation at Tharad. It is the case of the prosecution that thus, accused Nos.1 and 2, had instead of taking 90 bags of wheat to the Fair Price Shop of village Bharadva, taken that quantity of wheat to sell in open market. The accused Nos.1 and 2 by taking that quantity of wheat for transporting it from Tharad to Radhanpur, loaded that 90 bags of wheat in the Motor Truck No.5202 of the ownership of the accused No.3. That quantity of wheat was unauthorizedly sold to the accused No.4. It is the case of the prosecution that to hide that illegal transaction of disposal of 90 bags of wheat, the accused Nos.1 to 4 hatched a conspiracy with the accused Nos.5 and 6 and prime accused obtained a quantity of wheat from the Fair Price Shop of the accused Nos.5 and 6, situated at Bhabhar and they transported that quantity of wheat by a Truck No.GRO - 4061. The Police Sub-Inspector of village Sui came to know about bringing of that stock of wheat at village Bharadva. That Police Sub-Inspector of Sui Police Station came to the village Bharadva and seized 90 bags of wheat, together with truck. The quantity of wheat was confiscated to the State and the truck was returned to its owner.

[iii] It is also the case of the prosecution that the accused No.1 made an entry by his own underwriting in the authority letter of his shop, though, in fact, 40 bags of wheat were not brought from the godown of Tharad to the Fair Price Shop of village Bharadva. By transporting it in Truck No.GRO - 4061, said entry was made with a view to save his skin and the accused No.1 sold 40 bags of wheat in black market, by selling in open market. Likewise, the accused No.1 made a false entry in the zone book of the accuse No.2.

[iv] On or about 16.12.1982, the shop of accused No.2 at village Bharadva was inspected and checked in presence of panch witnesses and on making search of the shop of the accused No.2, about 12 ration cards were recovered. This ration cards were unauthorizedly kept in the shop with a view to sell the quantity of wheat in open black market. As stated in the complaint, the accused Nos.5 to 7 aided and abetted the prime accused in committing offence punishable under the Act. In short, it is the case of the prosecution that the accused have committed a breach of the provisions of the authority letter/license issued under the Gujarat Commodities [License Control and Declaration of Stock) Order, 1981 and said contravention is nothing but a contravention of different provisions of Section 3 of the Act. This contravention of different provisions of Section 3, are punishable under Sections 7, 8 and 9 of the Act.

5. Mr.N.D. Gohil, learned APP for the revision petitioner i.e. State of Gujarat has taken me through a copy of complaint and the impugned order challenged in this Criminal Revision Application. I have heard Mr.N.D.Gohil, learned APP for the revision petitioner, Mr.Y.S. Lakhani, learned advocate for criminal revision opponent Nos.1, 2, 4 to 7 and Mr.K.S.Javeri, learned advocate for the criminal revision opponent No.3 in detail at length.

6. During the course of arguments, Mr.N.D. Gohil, learned APP for the State has argued that looking to serious nature of offences, if this Court feels necessary, one more and last chance be given to the prosecution allowing it to lead evidence before the Special Court and for giving such chance, impugned order is required to be set aside and the Special Case No.1 of 1986 is required to be remanded to the Special Court with suitable directions to the prosecution as well as the learned Judge of the Special Court. Mr.N.D.Gohil, by making a statement at Bar undertook before this Court that efforts will be made by the prosecution to lead

evidence in the case and the prosecution will take effective steps for completing trial of the case, within six months from the date of the receipt of the order of this Court by the Special Court. During the course of arguments, Mr.N.D.Gohil has argued that there is no express provision in the Cr.P.C. to drop the proceeding initiated against the accused. He has further argued that once the charge is framed against the accused, the accused cannot be discharged at any time, after framing of a charge against them. He has further argued that there is a provision of Section 258 in Cr.P.C. which speaks for stoppage to the proceeding, but that provision will not be applicable to the present case because the case on hand was a warrant triable case, as the charge was framed against the accused. He has further argued that looking to the serious nature of offence, the order challenged in this Criminal Revision Application, deserves to be set aside and Special Case No.1 of 1986 deserves to be remanded to the learned Judge of the Special Court. In support of his arguments, Mr.N.D.Gohil, learned APP for the revision petitioner i.e. State of Gujarat has placed reliance on the case of U.P. Pollution Control Board v/s. M/s. Mohan Meakins Ltd. and Others reported in J.T. 2000 (3) S.C. 466.

7. Mr.Y.S.Lakhani, learned advocate for the criminal revision opponent Nos.1, 2, 4 to 7 has vehemently argued that the learned Judge of the Special Court has, by placing reliance on different decisions of the Hon'ble Supreme Court on the point of fundamental right of speedy public trial, rightly dropped the proceedings against the accused and consequently, he has rightly discharged the accused from the case. He has further argued that the learned Judge of the Special Court has discussed the facts in detail showing what opportunity had been given to the prosecution to lead the evidence of the prosecution witnesses, within 15 years. He has argued that though sufficient and ample opportunity was given to the prosecution within 15 years, not a single witness could be examined by the prosecution and, therefore, considering the available facts on record, the learned Judge of the Special Court has rightly discharged the accused, by dropping the proceeding. He has argued that merely because, the impugned order does not suit the prosecution, it cannot be said that it is an incorrect and illegal order. He has further argued that looking to the different stages, full opportunity was given to the prosecution. He has further argued that the learned Judge of the Special Court has placed reliance on the correct facts, so as to arrive at a just and proper decision and, therefore, the impugned order cannot be

said to be a perverse order. In view of these submissions, Mr.Y.S.Lakhani has argued that this Criminal Revision Application is devoid of merits and it requires to be dismissed. Mr.Y.S.Lakhani has placed reliance on the following two authorities.

[1] Abdul Rehman Antulay and others v/s. R.S. Nayak and another, reported (1992) 1 Supreme Court Cases 225.

[2] A decision of the constitution bench comprising seven Hon'ble Judges of the Supreme Court rendered in the case of P. Ramachandra Rao v/s. State of Karnataka, reported in (2002) 4 Supreme Court Cases 578.

8. From the record, the following facts are emerged for which, there is no dispute from either side.

[1] The alleged offences, as per the complaint, were committed by the accused in the year 1982. That offences are for contravention of the provision of the Gujarat Essential Commodities [License Control and Stock Declaration] Order, 1981 and also the provision of Section 3, which are punishable under Section 7 of the Act.

[2] It is alleged by the prosecution that some of the accused have committed the alleged offences of attempt and abetment which are punishable under Section 8 of the Act and some of the accused have committed an offence of making a false statement which is punishable under Section 9 of the Act.

[3] Though the alleged offences were committed by the accused in the year 1982, the complainant lodged his complaint against the accused in the Special Court, on 01.01.1986.

[4] The accused Nos.1, 2 and 5 appeared before the Special Court on 06.02.1986.

[5] As stated by the learned Judge of the Special Court, in his order, and in view of Rojkam dated 31.07.1986, the charge at Ex.8 appears to have been framed and pleas of the accused were recorded at Exhs.9 to 15. He has further stated, in his order, that the charge Ex.8 is not traceable in the record.

[6] On bare perusal of the order, it is crystal clear that on the following dates, the learned Public

Prosecutor, who was in-charge of the case before the Special Court had asked for adjournments and at his requests, adjournments were granted in favour of the prosecution. Thereafter, the case was adjourned from time to time for one reason or another till 31.03.1987. On 31.03.1987, a note had been made in the Rojkam of the case that "this matter to be fixed as per the convenience of the Court". Immediately, thereafter, the next entry in the Rojkam is of 11.05.1990.

[7] When case was taken up on 11.05.1990, it was adjourned to 05.06.1990 "for evidence".

[8] On 05.06.1990, the case was adjourned to 18.07.1990 with the order "witness summons be issued".

[9] On 18.07.1990, the learned Public Prosecutor had remained absent and, therefore, the case was adjourned to 16.08.1990.

[10] On 16.08.1990, Advocates for some of the accused had prayed for time and the matter was adjourned to 04.09.1990.

[11] On 04.09.1990, witnesses were not present before the Court and, therefore, the case was adjourned from time to time to 01.10.1990, 28.11.1990, 24.12.1990 and 24.01.1991.

The Rojkam indicates that the order was passed on the aforesaid four dates, to issue summons to the complainant.

[12] From the Rojkam, it appears that on 07.03.1991, the witness summons of the complainant, was not issued and hence, it was directed that it be issued.

[13] As per the Rojkam, the witness summons were not served and, therefore, the case was adjourned from time to time to 08.05.1991, 29.05.1991, 07.06.1991, 05.07.1991, 31.07.1991 and 08.08.1991.

[14] On 11.09.1991, the witnesses were not present and as per the Rojkam, the next date i.e. 16.11.1991 was fixed with a direction to issue witness summons against the complainant.

[15] As per Rojkam, on 20.12.1991, the Court noted that "the complainant died".

[16] On 07.02.1992, 16.03.1992 and 23.04.1992, the

learned Public Prosecutor was directed by the Court to keep the prosecution witnesses present on respective next dates.

[17] On 15.06.1992, some of the accused were not present.

[18] On 17.07.1992, the learned Public Prosecutor was again directed by the Court to keep the witnesses present.

[19] It appears that on 18.09.1992, 06.11.1992 and 17.12.1992, the witnesses were not kept present and on that dates exemption from personal appearance was sought for, on behalf of some of the accused and case was, ultimately, adjourned to 11.02.1993.

[20] On 11.02.1993, the Public Prosecutor was directed to keep witness - complainant present and, thereafter, the case was adjourned from time to time to 16.03.1993, 03.08.1993 and 02.09.1993.

[21] On 02.09.1993, as per the Rojkam, the Court ordered to issue witness summons, as per Ex.1 and finally it was adjourned to 01.11.1993.

[22] On 01.11.1993, a note was made in the Rojkam to the effect that the evidence of these witnesses would be taken, thereafter, at the convenience of the Court, when the learned Public Prosecutor would file documents.

[23] From the record, it appears that no progress appears to have taken place in the proceeding of the case, during the period between 01.11.1993 and 05.09.1995 and, thereafter, the case was adjourned from time to time and ultimately, it was adjourned to 20.01.1996.

[24] On 20.01.1996, the learned Public Prosecutor asked for time for obtaining case record. Thus, the case was adjourned to 18.03.1996, at the request of learned Public Prosecutor.

[25] On 18.03.1996, the Public Prosecutor had remained absent.

[26] On 23.04.1996, the learned Public Prosecutor submitted an application Ex.91 asking for time on the ground that the original record of the case was with the Anti Corruption Bureau and the same was to be collected, before summons could be issued. Similar request was made on 18.05.1996 vide Ex.95, on 01.07.1996 vide Ex.96 and on

19.07.1996 vide Ex.100.

[27] On 22.10.1996, the learned Public Prosecutor submitted an application Ex.104 for issuance of witness summons to someone in Anti Corruption Bureau to attend the Court with the record of the case.

[28] On 09.01.1997, a report Ex.109 was submitted through the learned Public Prosecutor stating interalia that the record was rather old and it would take time to locate the same from Anti Corruption Bureau. Thereafter, the case was adjourned from time to time, till 27.06.1997.

[29] On 27.06.1997, the accused submitted an application Ex.126 on which the impugned order was passed by the learned Judge of the Special court and by that order, the proceeding of the case was ordered to be dropped discharging the accused from the case.

9. The learned Judge of the Special Court has observed in his order below application Ex.126 that there was delay of three years in filing the complaint and, thereafter, the case was adjourned from time to time largely because the prosecution witnesses did not remain present before the Court, despite the directions were given by the Court. The learned Judge of the Special Court has also observed that case remained practically on dormant file for a total period of five years. The learned Judge of the Special Court has also observed that on several occasions the matter was adjourned as the learned Public Prosecutor had to collect original record. It is further observed by the learned Judge of the Special Court that the record of the case was not with the learned Public Prosecutor till 09.01.1997, the date on which the application Ex.109 was submitted through the learned Public Prosecutor stating interalia that the record was rather old one and it would take time to locate the same from the Anti Corruption Bureau. The learned Judge of the Special Court has also observed that the scenario indicates that the accused persons are not in any way responsible for the delay since their appearance before the Court. He has further observed that absence of accused for some time, would have made no difference as witnesses for prosecution did not attend the Court during the entire period of almost 15 years except on one occasion i.e. on 20.01.1996. It is interesting to note that the witnesses were present on 20.01.996 but the prosecution did not examine them as the original record was not available with him and thus, the

learned Judge of the Special Court has specifically observed that it cannot be said that the accused were responsible for the delay. Thus, the learned Judge of the Special Court has stated in detail in paras 3 and 4 of his order about the progress of the case, which could be achieved during 15 years. It is not the say of Mr.N.D. Gohil, learned APP that whatever facts are stated in para 3 & 4 of the order, are against the record or that facts are incorrectly stated. It is not his say that whatever facts are stated by the learned Judge of the Special Court are not carrying the truth and thus, it is not the case of the revision petitioner that the order is perverse meaning thereby the order is passed on "no material". Mr.N.D.Gohil has not challenged any of the averments made by the learned Judge of the Special Court in his order, and hence, the order cannot be said to be incorrect order. When the order is passed on factual aspects, it cannot be said to be an illegal order. Now only question remains to be decided as to whether the impugned order can be said to be an illegal order. The legality of the order can be examined on the point as to whether the learned Judge of the Special Court had jurisdiction to pass such order of dropping the proceeding of the case and discharging the accused from the case. If, the learned Judge of the Special Court has no jurisdiction to pass such order, then certainty, it can be said that the order is passed without jurisdiction and in that case, the order can be said to be an illegal order. But on the basis of decisions rendered by the Hon'ble Supreme Court, if the legal position is settled that the learned Judge of the Special Court had jurisdiction to pass such order then the order is to be examined as to whether the learned Judge of the Special Court has exceeded his jurisdiction and if it appears that he has exceeded his jurisdiction, then also, order can be said to be an illegal order and in that circumstances, this Criminal Revision Application can be allowed.

10. Admittedly, there is no provision in Cr.P.C. to drop the proceeding when a charge was framed. No doubt, the learned Judge of the Special Court has observed that the charge of the accused is not traceable and only pleas Exhs.9 to 15 are on record, then it can well be inferred that the charge was framed. When the charge was framed, in view of Section 12AC of the Act, it can be said that the learned Judge of the Special Court adopted the procedure contained in Chapter XVIII of Cr.P.C. If we examine the provisions running from Sections 225 to 236, we find that once the charge is framed, the prosecution is duty bound to lead evidence and, ultimate, result of

the case would end in either conviction or acquittal. There is no provision with regard to dropping of the proceeding of the case in the aforesaid provisions of Chapter XVIII of Cr.P.C. Under these circumstances, this Court is required to examine the submissions of Mr.N.D. Gohil on the point that the learned Judge of the Special Court had no jurisdiction to pass the order dropping the case against the accused and by passing such order, he had no jurisdiction to discharge the accused from the case once the charge was framed.

11. Mr.Y.S.Lakhani, learned advocate for criminal revision opponent Nos.1, 2 and 4 to 7 has vehemently argued that the learned Judge of the Special Court has rightly placed reliance on the following decisions :-

[1] Hussainara Khatoon v. State of Bihar, reported in AIR 1979 S.C. 1360.

[2] Abdul Rehman Antulay v. R. S. Nayak, reported in AIR 1992 S.C. 1701.

[3] Madheswari Singh v. State of Bihar, reported in AIR 1986 Patna 324.

[4] State v. Maksudan Singh, reported in AIR 1986 Patna 38.

[5] Santosh De v. Archna Guha, reported in AIR 1994 S.C. 1229.

[6] State of Bihar v. Uma Shanker, reported in AIR 1981 S.C. 641.

[7] Mehmood Mirza v. Assistant Collector of Customs, reported in 1997 Cr.L.J. 181.

[8] Common Cause v. Union of India, reported in 1997 (2) G.L.R. 1297 and 1302.

12. Looking to the impugned order, the learned Judge of the Special Court has mainly relied on a fundamental right of speedy trial flowing from Article 21 of the Constitution. In case of Abdul Rehman Antulay and others v. R. S. Nayak, reported in (1992) 1 S.C.C. 225, the Constitution Bench comprising five Hon'ble Judges of the Hon'ble Supreme Court of India has reiterated that a right to speedy trial is a fundamental right of the accused. It has been held that fair, just and reasonable procedure implicit in Art. 21 creates a right in the accused to be tried speedily. Right to speedy trial is

the right of the accused. The fact that a speedy trial is also in public interest or that it serves the social interest also, does not make it any the less the right of the accused. Social interest lies in punishing the guilty and exoneration of the innocent but this determination (of guilt or innocence) must be arrived at with reasonable despatch - reasonable in all the circumstances of the case. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.

12.1 It is also held in para-84 of the aforesaid decision as follows ;

" We may next deal with, what is called the "demand" rule. The contention is that an accused who does not demand a speedy trial, who stands by and acquiesces in the delays, cannot suddenly turn round after a lapse of period and complain of infringement of his right to speedy trial. It is not possible to accede to this contention either. An accused does not prosecute himself. The State or complainant, as the case may be, to proceed with the case with reasonable promptitude. Particularly, in this country, where the large majority of accused come from poorer and weaker sections of the society, not versed in the ways of law, where they do not often get competent legal advice, the application of the said rule is wholly inadvisable. Of course, in a given case, if an accused demands speedy trial and yet he is not given one, may be a relevant factor in his favour. But we cannot disentitle an accused from complaining of infringement of his right to speedy trial on the ground that he did not ask for or insist upon a speedy trial."

12.2 In the aforesaid decision, the Hon'ble Supreme Court has laid down certain propositions which are, meant to serve as guidelines. For our purpose, the relevant propositions are as follows :-

[1] Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the social interest also, does not make it any the less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.

[2] Right to speedy trial flowing from Article 21

encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and re-trial. That is how, this Court has understood this right and there is no reason to take a restricted view.

[3] The concerns underlying the right to speedy trial from the point of view of the accused are :

(a) the period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;

(b) the worry, anxiety, expense and disturbance to his vocation and peace; resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and

(c) undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise.

[4] At the same time, one cannot ignore the fact that it is usually the accused who is interested in delaying the proceedings. As is often pointed out, "delay is a known defence tactic". Since the burden of proving the guilt of the accused lies upon the prosecution, delay ordinarily prejudices the prosecution. Non-availability of witnesses, disappearance of evidence by lapse of time really work against the interest of the prosecution. Of course, there may be cases where the prosecution, for whatever reason, also delays the proceedings. Therefore, in every case, where the right to speedy trial is alleged to have been infringed, the first question to be put and answered is - who is responsible for the delay ?.....

[5] While determining whether undue delay has occurred (resulting in violation of Right to Speedy Trial) one must have regard to all the attendant circumstances, including nature of offence, number of accused and witnesses, the work load of the court concerned, prevailing local conditions and so on - what is called, the

systemic delays. It is true that it is the obligation of the State to ensure a speedy trial and State includes judiciary as well, but a realistic and practical approach should be adopted in such matters instead of a pedantic one.

[6] ..... However, inordinately long delay may be taken as presumptive proof of prejudice. In this context, the fact of incarceration of accused will also be a relevant fact. The prosecution should not be allowed to become a persecution. But when does the prosecution become persecution, again depends upon the facts of a given case.

[7] We cannot recognize or give effect to, what is called the "demand" rule. An accused cannot try himself; he is tried by the court at the behest of the prosecution. Hence, an accused's plea of denial of speedy trial cannot be defeated by saying that the accused did at no time demand a speedy trial. If in a given case, he did make such a demand and yet he was not tried speedily, it would be a plus point in his favour, but the mere non-asking for a speedy trial cannot be put against the accused. Even in USA, the relevance of demand rule has been substantially watered down in Barker and other succeeding cases.

[8] Ultimately, the court has to balance and weigh the several relevant factors - "balancing test" or "balancing process" - and determine in each case whether the right to speedy trial has been denied in a given case.

[9] Ordinarily speaking, where the court comes to the conclusion that right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed. But this is not the only course open. The nature of the offence and other circumstances in a given case may be such that quashing of proceedings may not be in the interest of justice. In such a case, it is open to the court to make such other appropriate order - including an order to conclude the trial within a fixed time where the trial is not concluded or reducing the sentence where the trial has concluded - as may be deemed just and equitable in the circumstances of the case."

13. Whatever propositions are laid down in the aforesaid case, are again reaffirmed by the Constitution Bench comprising seven Hon'ble Judges of the Hon'ble Supreme Court in the case of P. Ramachandra Rao v. State of Karnataka, reported in (2002) 4 Supreme Court Cases 578, it has been observed in para-21 of this latest decision as follows :-

> "The Constitution Bench in A.R. Antulay case referred to such power, vesting in the High Court (vide paras 62 and 65 of its judgment) and held that it was clear that even apart from Article 21, the courts can take care of undue or inordinate delays in criminal matters or proceedings if they remain pending for too long and putting an end, by making appropriate orders, to further proceedings when they are found to be oppressive and unwarranted."

13.1 It is further held in para-28 of the aforesaid recent decisions as follows :-

> "It must be left to the judicious discretion of the court seized of an individual case to find out from the totality of circumstances of a given case if the quantum of time consumed up to a given point of time amounted to violation of Article 21, and if so, then to terminate the particular proceedings, and if not, then to proceed ahead. The test is whether the proceedings or trial has remained pending for such a length of time that the inordinate delay can legitimately be called oppressive and unwarranted, as suggested in A.R. Antulay."

14. In the aforesaid decision of P. Ramachandra Rao [Supra], the Hon'ble Supreme Court of India has summarized legal position and arrived at the following conclusions. In para-29, it has been held, as follows :-

> [1] The dictum in A. R. Antulay [(1992) 1 SCC 225] is correct and still holds the field.
>
> [2] The propositions emerging from Article 21 of the Constitution and expounding the right to speedy trial laid down as guidelines in A. R. Antulay case adequately take care of right to speedy trial. We uphold and reaffirm the said propositions.

[3] The guidelines laid down in A. R. Antulay case are not exhaustive but only illustrative. They are not intended to operate as hard-and-fast rules or to be applied like a straitjacket formula. Their applicability would depend on the fact situation of each case. It is difficult to foresee all situations and no generalization can be made.

[4] It is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings. The time-limits or bars of limitation prescribed in the several directions made in Common Cause (I), Raj Deo Sharma (I) and Raj Deo Sharma (II) could not have been so prescribed or drawn and are not good law. The criminal courts are not obliged to terminate trial or criminal proceedings merely on account of lapse of time, as prescribed by the directions made in Common Cause case (I), Raj Deo Sharma case (I) and (II). At the most the periods of time prescribed in those decisions can be taken by the courts seized of the trial or proceedings to act as reminders when they may be persuaded to apply their judicial mind to the facts and circumstances of the case before them and determine by taking into consideration the several relevant factors as pointed out in A.R. Antulay case and decide whether the trial or proceedings have become so inordinately delayed as to be called oppressive and unwarranted. Such time-limits cannot and will not by themselves be treated by any court as a bar to further continuance of the trial or proceedings and as mandatorily obliging the court to terminate the same and acquit or discharge the accused."

14.1 Lastly in para-34 of the aforesaid decision, the Hon'ble Supreme Court has also given a guidelines as follows :-

"And lastly, it is clarified that this decision shall not be a ground for reopening a case or proceeding by setting aside any such acquittal or discharge as is based on the authority of 'Common Cause' and 'Raj Deo Sharma' cases and which has already achieved finality and reopen the trial against the accused therein."

15. Thus, in view of the aforesaid legal position, it is left to the judicious discretion of the Court seized of an individual case to find out from the totality of circumstances of a given case, if the quantum of time consumed up to a given point of time amounted to violation of Article 21, and if so, then to terminate the particular proceedings. The test is whether the proceedings or trial has remained pending for such a length of time that the inordinate delay can legitimately be called oppressive and unwarranted, as suggested in A.R. Antulay case.

16. The learned Judge of the Special Court has discussed the facts in paras 3 and 4 of his order to show as to how an inordinate delay in conducting the trial of the case, has occurred on the part of the prosecution. The learned Judge of the Special Court has given in his order minute details with regard to progress of the case, daywise and stagewise.

17. This Court [Coram : A. K. Trivedi, J.] on 03.02.1998 by passing an order called for Record and Proceedings of the case from the trial Court. I have carefully perused the material on record. On perusal of the record, the following undisputed facts can be summarized.

[1] The offences as alleged in the complaint, are alleged to have been committed in December, 1982. The complaint against the accused came to be lodged by the complainant on 01.01.1986. Thus, the complainant lodged his complaint about three years, after occurrence of incident of alleged offence. In the complaint, the prosecution has not explained this long delay of three years in lodging the complaint.

[2] The offences alleged to have been committed are punishable under Sections 7, 8 and 9 of the Act. Mr. Y.S. Lakhani has argued that the complaint was lodged in the Special Court constituted under Section 12-A of the Act and as per Clause (f) of Section 12-AA of the Act, all offences under this Act shall be tried in summary way and the provisions of Sections 262 to 265 (both inclusive) of the Code shall, as far as may be, apply to such trial and as per proviso to Clause (f) of Section 12-AA of the Act provides that in the case of any conviction in a summary trial under Section 12-AA of the Act, it shall be lawful for the Special Court to pass a sentence of imprisonment for a term not exceeding two years. Mr.Y.S. Lakhani has argued that in view of clause (f) of Section 12-AA of the Act, the learned Judge

of the Special Court could not have inflicted the sentence of imprisonment for a term not exceeding two years, if the trial would have ended in a conviction. Thus, the offences, for which the trial has been delayed, cannot be said to be a serious offences. Looking to the quantum of sentence, which could have been inflicted, if the trial would have ended in a conviction and, therefore, the arguments of Mr.N.D. Gohil that the offences, for which the accused were put up for trial are serious offences, are negatived. If we examine the facts stated in the complaint, it is alleged that in all 90 bags [total 90 quintal] of wheat received by the accused Nos.1 and 2 from the godown of Civil Supplies Corporation were sold in open market, instead of selling that wheat to ration card holders registered on the register of the Government Fair Price Shop of village Bharadva. In the complaint, it is alleged that the accused Nos.1 and 2 sold that wheat in black market, but nowhere, it is stated, as to what profit, they earned by selling that wheat in open market. Thus, the question with regard to 90 quintal of wheat, which are alleged to have been sold by the accused Nos.1 and 2 with the aid and abetment of other accused in open market. This is a sum and substance of the nature of the offence. The learned Judge of the Special Court had taken into consideration the minimum sentence, which could be inflicted by him and the nature of the offences, considering the facts stated in the complaint.

[3] From the Record and Proceedings, it appears that on 31.07.1986, charge Ex.8 was framed and the next date i.e. 02.09.1986 was fixed for recording of evidence of the prosecution witnesses. As per the Rojkam dated 31.08.1986, the order was passed by the Court to issue witness summons. Thus, it can be said that the prosecution was expected to lead evidence on 02.09.1986 and on all subsequent dates, to which the case was adjourned from time to time. It is interesting to note that during the period from 26.06.1990 to 09.01.1997, on following sixteen dates, the applications were submitted by the prosecution to adjourn the case, on one or other ground :-

Sr.No.	Application	The date on which it was given
1.	Ex.13	18.07.1990

2. Ex.67 01.11.1993

3. Ex.72 20.09.1995

4. Ex.73 07.10.1995

5. Ex.76 24.11.1995

6. Ex.79 15.12.1995

7. Ex.81 20.01.1996

7A. Ex.82 20.01.1996

8. Ex.86 18.03.1996

9. Ex.88 10.04.1996

10. Ex.91 23.04.1996

11. Ex.95 18.05.1996

12. Ex.96 01.07.1996

13. Ex.100 19.07.1996

14. Ex.101 24.09.1996

15. Ex.104 22.10.1996

16. Ex.109 09.01.1997

[4] From the record, it appears that, on 20.01.1996, the learned Public Prosecutor, Banaskantha, District Palanpur submitted a purshis Ex.81, stating interalia, that three witnesses were present before the Court. On that day, the prosecution could have examined that three witnesses present before the Court, as per Section 309 of Cr.P.C. It is interesting to note that on that very day i.e. 20.01.1996, the learned Public Prosecutor by submitting application Ex.82 requested the Court to grant adjournment. Thus, on 20.01.1996, prosecution did not examine three witnesses who were present before the Court.

[5] From the record, it appears that during the period between 02.09.1986 to 07.06.1997, the prosecution did not examine a single witness. During the course of arguments, Mr.N.D. Gohil, learned APP representing the revision petitioner i.e. State of Gujarat has not

explained the delay caused in this long period of eleven years. If we refer to an application Ex.67, we find that an application was given for and on behalf of the complainant requesting the Court to examine the complainant first, as it was not a police case and then frame a charge. It was also stated in application Ex.67 that the complainant has expired. From the application Ex.82, it appears that an adjournment was sought for by the learned Public Prosecutor on the ground that the papers relating to investigation, were to be called for from the Office of Assistant Director, A.C.B., Ahmedabad. Thereafter, no serious attempt appears to have been made by the prosecution to call for that papers from the Office of Assistant Director, A.C.B., Ahmedabad. The similar type of request was made in application Ex.88 on 10.04.1996. In application Ex.91, the same ground was stated for adjournment. Again, the same request on the same ground was made by submitting application Ex.95 on 18.05.1996 and application Ex.96, on 01.07.1996. Again, same type of request made on the same ground by the learned Public Prosecutor by submitting application Ex.100 on 19.08.1996 and application Ex.101 on 24.09.1996. On 22.10.1996, the learned Public Prosecutor submitted an application Ex.104 and requested the Court to issue witness summons to call the concerned clerk of the Office of Director, Anti Corruption Bureau, Ahmedabad. The learned Judge of the Special Court granted that application Ex.104 with passing further order to issue summons to the witnesses as prayed for by the prosecution.

[6] It appears from the record that on 09.01.1997, P.S.I., A.C.B. Palanpur submitted an application Ex.109 wherein, it was stated that the case was more than ten years old case and the original papers were required to be searched and on that ground, the adjournment was sought for through the learned Public Prosecutor. It is sorry state of affair that till 07.06.1997, the prosecution failed to search out the original papers and the case was adjourned to 27.06.1997, the date on which the accused submitted an application Ex.126.

[7] The application Ex.126 was heard on 24.07.1997 and the impugned order came to be passed on 07.08.1997. Even during the course of hearing of Ex.126, the learned Public Prosecutor, who was in-charge of the case failed to give undertaking to the Court that he would see that on the next date, all the witnesses would remain present any how, and the trial would certainly commence expeditiously. If really the prosecution was interested to see that the trial of the case is commenced at the

earliest, the prosecution could have kept all the witnesses present before the Court on 24.07.1997 and could have requested the Court not to pass an order on application Ex.126 and to prosecute in the case, further, though arguments were heard on 24.07.1997. This shows the lethargy and unpardonable "in action" on the part of the prosecution.

[8] Mr.Y. S. Lakhani has argued that the trial could have been commenced at the earliest by seeking orders of this Court in this present matter. This Court [Coram : Ms. R. M. Doshit, J.] issued rule on 14.07.1998. During the period between 14.07.1998 and 07.12.2002, the learned APP did not file any note requesting this Court to take up this Criminal Revision Application for final hearing at the earliest. The prosecution could have shown its bonafides for conducting of the trial at the earliest. Thus, even during the pendency of this present Criminal Revision Application, the prosecution has not taken any active part by getting this matter heard, at the earliest. This reflects the absence of bonafides and good faith on the part of the prosecution for the trial of the case at the earliest. The impugned order came to be passed on 07.08.1997, by which the proceeding of Special Case No.1 of 1986 was ordered to be dropped. Thus, the learned Judge of the Special Court has come to a right conclusion that an inordinate delay of 15 years has occurred, as a result of lethargy and "inaction" on the part of the prosecution. From the record, it is manifest that only the prosecution is responsible for delay and right to speedy trial is infringed by the prosecution by causing such long delay of 15 years.

[9] The accused have stated in their application that they have been harassed financially, mentally and physically during the period of last 15 years and that they are under constant mental tension because of hanging sword of prosecution of this case. In the case of Abdul Rehman Antulay [Supra], the Hon'ble Supreme Court has held that inordinately long delay may be taken as presumptive proof of prejudice. Therefore, looking to an inordinately delay of long period of 15 years, a presumption can arise in favour of the accused, that they are prejudiced, as case has not been conducted since long. The prosecution has to rebut that presumption that in fact, accused are not prejudiced. No such attempt has been made by the revision petitioner to rebut that presumption.

[10] From the record, it also appears that, during the

long span of eleven years, after charge was framed, many times, accused could not remain present and warrants were issued against them and subsequently, they got that warrants cancelled. During that period, the accused No.6 Shambhulal Tejaram Thakkar fell ill and he had to seek adjournment on the ground of his illness. An application Ex.32 is clear to the effect that the said accused No.6 Shambhulal Tejaram Thakkar had become bedridden for an ailment of paralysis. This fact clearly shows that the accused were, substantially, prejudiced because of a long delay.

18. On giving cumulative effect to the aforesaid all facts and circumstances, the learned Judge of the Special Court has rightly come to a conclusion that a right to speedy trial has been infringed by the prosecution and while, arriving at such conclusion, the learned Judge has taken into consideration all the attendant circumstances including nature of offence, number of accused [in all seven], number of witnesses [in all twenty-three] and the work load of the Court. The District Court, Banaskantha District at Palanpur is not a heavy District, compared to Vadodara, Surat and Rajkot Districts. The work load has been bifurcated by assigning certain Sessions Cases to the Court of the learned Joint District Judge at Deesa and, therefore, looking to all these facts and circumstances, this Court is of the view that the impugned order cannot be said to be an illegal, incorrect or improper order. As held in the case of P. Ramachandra Rao [Supra] by the Constitution Bench comprising of seven Hon'ble Judges of the Hon'ble Supreme Court, the Court seized of an individual case can terminate the particular proceedings in exercise of judicial discretion. Of course that judicial discretion is left to the Court concerned and that Court has to find out from the totality of circumstances of a given case and to exercise judicial discretion to terminate particular proceedings, if the quantum of time consumed up to a given point of time amounted to violation of Article 21 of the Constitution. The learned Judge of the Special Court has considered all these aspects in detail. The learned Judge of the Special Court had jurisdiction to terminate the proceeding in appropriate case. Looking to the facts and circumstances of the case, there cannot be a better case than this case for exercising judicial discretion to terminate the proceedings.

19. In view of what is discussed hereinabove, this Court is of the considered view that the impugned order, in no case can be said to be illegal, incorrect or improper order and, therefore, this Criminal Revision

Application is devoid of merits and it deserves to be dismissed. In the net result, this present Criminal Revision Application fails, therefore, it is dismissed accordingly. Looking to the facts and circumstances of the case, the State Government is directed to pay cost of Rs.1,000-00 [Rupees One Thousand Only] to each accused for dragging them to this Court, unnecessarily for no justifiable reason. Rule is discharged.

[H. H. MEHTA, J.]

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